

BEFORE THE TENNESSEE REGULATORY AUTHORITY  
AT NASHVILLE, TENNESSEE

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IN RE: JOINT PETITION OF TEC  
COMPANIES AND THE CONSUMER  
ADVOCATE DIVISION FOR APPROVAL  
OF EARNINGS REVIEW SETTLEMENT

) OFFICE Docket No. 99-00995  
) EXECUTIVE SECRETARY  
)

**ATTORNEY GENERAL'S OBJECTION TO THE PROPOSED MEMORANDUM OF  
UNDERSTANDING BETWEEN TEC AND AT&T FILED MAY 8, 2001**

INTRODUCTION

The Attorney General of the State of Tennessee, by and through the Consumer Advocate and Protection Division of the Office of the Attorney General and Reporter for the State of Tennessee ("Attorney General"), objects to the Proposed Memorandum of Understanding executed between AT&T Communications of the South Central States, Inc. ("AT&T"), and Crockett Telephone Company, Inc., Peoples Telephone Company and West Tennessee Telephone Company, Inc. (the "TEC Companies"), dated March 30, 2001, but not filed with the Tennessee Regulatory Authority ("Authority") until May 8, 2001. The proposed Memorandum of Understanding is submitted without supporting filings, such as a petition. It is the Attorney General's Office that carries the first review of the proposal.

DISCUSSION

As a preliminary matter, the Attorney General respectfully submits that the first matter for review is the motion for removal of AT&T from this docket. This motion was filed on March 7, 2000. Clearly, AT&T believes that the motion should be disposed of preliminarily without

hearing on the merits.<sup>1</sup> It is appropriate to review this motion prior to consideration of the proposed Memorandum of Understanding that eventually eliminates access charges, costing Tennessee rate payers \$1,800,000 annually and over \$200,000 for the year 2001. While the ramifications of the proposal are far-reaching, all aspects of its impact may not be realized at this time. It is quite obvious, however, that the proposal offers nothing to the rate payers of the TEC Companies. It is a boon for AT&T and a brass attempt at an end-run around the Authority's review of these matters in other dockets presently open and active. The TEC Companies lose nothing and have obviously bargained away the rate payers' credits.

There is simply no reason to hold up the original agreement between the TEC Companies and the Attorney General any longer.

AT&T's desired relief should not be considered in this docket. Clearly, AT&T seeks access charge reform, as reflected in AT&T's filings in this matter.<sup>2</sup> AT&T wishes to address reductions in the access charges and competition issues more appropriately considered in other dockets open before the Authority. AT&T's approach is more specifically addressed in previous filings by this office.<sup>3</sup>

AT&T's problem is universal in nature in that every access charge from an incumbent

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<sup>1</sup>Comments of AT&T Communications of the South Central States, Inc. as to Issues Proposed by TEC Companies and the Consumer Advocate Division, dated 6/14/00, p. 7; Reply of AT&T Communications of the South Central States, Inc. to Comments of TEC Companies and the Consumer Advocate Division, dated June 19, 2000, p. 2.

<sup>2</sup>Statement of Issues by AT&T Communications of the South Central States, Inc., dated 6/5/00, pp. 1-3; AT&T Communications of the South Central States, Inc. First Set of Discovery Requests to the Consumer Advocate Division, dated 3/23/00, pp. 1-6;

<sup>3</sup>Consumer Advocate Division's Comments on AT&T's Statements of Issues, dated 6/14/00, pp. 1-5.

local exchange carrier ("ILEC") such as TEC is not based on cost. While AT&T's claim of not using cost based rates may be valid for individual access rates, it is extremely unusual for a forecasted cost of service to be performed by rate element. Typically, as in this case, a total cost of service was used to derive the calculation of excess earnings. In this docket, there is no evidence anywhere in the record of what the actual access charge cost is. The settlement agreement between the Attorney General and the TEC Companies does not affect access charges. There is neither a reduction nor an increase proposed. Access charges are not at issue. AT&T should not be allowed to hold the TEC Companies rate payers hostage in order to gain leverage over an issue not present in this docket.

The settlement agreement between TEC and the Attorney General's Office does the most to benefit the TEC ratepayers and for that matter, rate payers period. The reductions of access charges to AT&T, Sprint, BellSouth, etc. goes straight to their bottom line, net income. With their impending deregulation by the legislature, AT&T is not compelled to flow through access reductions to any of the ratepayers of Tennessee. AT&T now has the opportunity to raise their long distance rates to cover the loss in margin from access charges due to the ILECs.

This Authority seeks to perform its duties consistent with the legislature's intent as interpreted by this Authority and/or the judiciary. In doing so, the Authority relies on the law, the facts and its own policy, which certainly include its own established policies. Consequently, AT&T is bound by the Authority's May 25, 1999 Order in the Access Charge Reform Docket, No. 97-00889. As noted by Director Malone at the May 15, 2001 Authority Conference, where the Authority has clearly spoken on an issue that issue should be consider resolved. AT&T's position in the present docket is unequivocally addressed in the Authority's decision of May 25,

1999 in the Access Charge Reform Docket No. 97-00889:

If access rates are reduced, is it appropriate to do so in this proceeding or during the one time rate rebalancing phase in the Universal Docket as required by Tenn. Code Ann. § 65-5-207(c)?

If access rates are reduced, it is appropriate to do so in the one time rate balancing phase of the Universal Service Docket (Phase III). Tenn. Code Ann. § 65-5-207 requires that the Authority consider access charges as part of universal service. Tenn. Code Ann. § 65-5-207(c)(8)(iii) states that, at a minimum, the Authority must consider intrastate access rates and the appropriateness of such rates as a significant source of universal service support. It does not, however, dictate whether this should be done in developing the universal support mechanism or during rate re-balancing. In Phase II of the Universal Service Docket, the Authority identified the amount of the universal service subsidy, while the purpose of rate rebalancing in Phase III is to identify rate adjustments needed as a result of the support mechanism created in Phases I and II. To facilitate the orderly handling of access charges, the Authority concludes that access charge adjustments should be considered in Phase III of the Universal Service Docket, along with all other potential sources of the universal service subsidy.

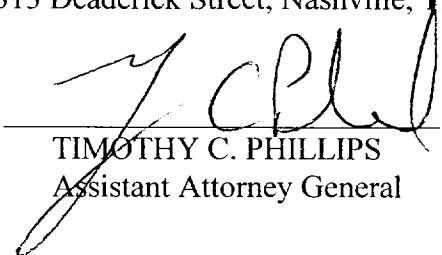
AT&T offers no reason to justify injection into the present docket of the broader issues more appropriately handled in the Access Charge Reform or the Universal Service dockets. AT&T's position makes you think of a basketball game where one of the teams wants to change the rules during the game retroactively eliminating the three (3) point shot. The Attorney General does not object to AT&T's presentation of its claim for access charge reform. However, the present docket is not the appropriate place for presentation of issues that do not impact review of the TEC Companies' earnings review.

## CONCLUSION

The Attorney General and AT&T agree that the present case is "separate and distinct" from the Access Charge Reform Docket. The present case is all about the TEC companies and the money they owe their customers. Reducing AT&T's access rates has little to do with this

**CERTIFICATE OF SERVICE**

The undersigned certifies that on May 15, 2001, an exact copy of the foregoing was delivered via facsimile transmittal and mailed, via U.S. Mail, postage prepaid, to **Val Sanford, Esq.**, Gullett, Sanford, Robinson & Martin, PLLC, 230 Fourth Avenue North, 3<sup>rd</sup> Floor, P.O. Box 198888, Nashville, TN 37219-8888; and **T.G. Pappas, Esq. and R. Dale Grimes, Esq.**, Bass, Berry & Sims, 2700 First American Center, 313 Deaderick Street, Nashville, TN 37238-2700.

  
TIMOTHY C. PHILLIPS  
Assistant Attorney General

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focus. The present docket and the Access Charge Reform have different purposes, involve different parties (in that the Access Charge Reform Docket is more inclusive), and raise different issues. This is an over-earnings matter. AT&T's interest in reducing access charges belongs in the Access Charge Reform Docket or the Universal Service dockets. Transferring AT&T's claims to that docket will in no way prejudice its interests. AT&T will have all appropriate opportunities to persuade the Authority to reduce access charges in the Access Charge Reform Docket or the Universal Service dockets. Removal of AT&T from the present docket will not preclude it from pursuing access charge reform in the appropriate docket.<sup>4</sup>

RESPECTFULLY SUBMITTED,

A handwritten signature in black ink, appearing to read 'T. C. Phillips', is written over a horizontal line.

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<sup>4</sup>AT&T's argument to the contrary in its Reply to the Attorney General's motion is inaccurate.